

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application of Qwest Corporation)	
Pursuant to Section 271 of the)	WC Docket No. 02-314
Telecommunications Act of 1996)	
To Provide In-Region, InterLATA Services)	
In Montana)	

**COMMENTS OF
THE MONTANA PUBLIC SERVICE COMMISSION**

Gary Feland
Chairman

Jay Stovall
Vice Chairman

Bob Anderson
Commissioner

Matt Brainard
Commissioner

Bob Rowe
Commissioner

October 15, 2002

The Montana Public Service Commission (“MPSC”) submits these Comments in response to Qwest’s re-filing of its 271 Application. The MPSC here adopts in full its recommendation in its Initial Evaluation in CC Docket No. 02-189, filed on August 1, 2002.

As detailed in our Initial Evaluation, our favorable recommendation that the Federal Communications Commission (“FCC”) grant Qwest authority to provide in-region, InterLATA services in Montana was conditioned on certain requirements.¹ Qwest has not satisfied those requirements.² Consistent with our Initial Evaluation, Qwest’s entry into the InterLATA market in Montana is not in the public interest. Therefore, we recommend the FCC deny Qwest’s bid for entry into the InterLATA market in Montana.

The Commission expands upon its initial evaluation in two areas. The first regards Qwest’s new 272 affiliate. The second regards Qwest’s decision to not satisfy a condition that serves to mitigate a price squeeze.

Since the time of the initial filing in CC Docket No. 02-189, issues about Qwest’s compliance with Section 272 of the Act have been brought before the MPSC.³ The MPSC has considered the issues regarding Qwest’s new 272 affiliate compliance, and concludes that a decision regarding the adequacy of Qwest’s 272 compliance resides with the FCC. The MPSC has not reviewed Qwest’s new affiliate and cannot make a recommendation with regard to the new affiliate and the 272 record. The MPSC encourages the FCC to thoroughly review the affiliate for 272 compliance, in a manner consistent with prior state review of the issues presented. The analysis and requirements the MPSC imposed in its initial Section 272 review

¹ See, Initial Evaluation of the MPSC, pages 1-2.

² In a letter dated October 1, 2002 to the Montana Commission, addressed to Chairman Gary Feland, Qwest artfully ducked an explicit rejection of compliance with the MPSC’s conditions. No indication that Qwest intends to comply with the conditions has been presented to the MPSC. The October 1, 2002 letter is attached hereto as Exhibit A.

³ See, AT&T’s Motion to Reopen and Supplement the Record, filed on September 19, 2002 in Docket No. D2000.5.70.

are unchanged and remain in effect. However, if a further review is appropriate at the state level, then the MPSC will undertake an expedited review of the issues for the FCC's consideration.

The Commission is obliged in these Comments to apprise the FCC of Qwest's decision to not comply with the Commission's evaluation and consultative report submitted August 1, 2002. Among other conditions, in its evaluation and consultative report, the Commission required Qwest to file a revenue requirement and rate design case. This filing requirement was intended to provide an opportunity to fully revisit the price squeeze issues discussed in the Commission's evaluation. The Commission notes the U. S. Department of Justice's position in this regard.⁴

Qwest filed on October 1, 2002, its response to the Commission's condition that purports to mitigate the price squeeze.⁵ In a nutshell, Qwest proposes an industry-wide collaborative effort that would involve all local exchange carriers in the State of Montana. Qwest's response fails to respond to the Commission's price squeeze concern. First, the Telecommunications Act of 1996 imposes pre-conditions for approval of an InterLATA entry bid on Qwest as a Regional Bell Operating company; those conditions do not apply to every incumbent local exchange carrier in Montana. Second, Qwest has not previously conditioned its filing of a revenue requirements and rate design case upon industry-wide participation by Montana ILECs.⁶ Such participation is neither advisable nor necessary, and a condition mandating that participation is nonsense. The price squeeze concern the Commission raises in its August 1, 2002 evaluation regards one ILEC, Qwest. Prior to being granted inter-LATA entry approval by the FCC, a revenue requirement and rate design case must be initiated. That is one of the MPSC's

⁴ August 21, 2002 Evaluation U. S. Department of Justice in WC Docket No. 02-189, page five, footnote 17.

⁵ Id. at footnote 2.

⁶ Relevant examples include: Docket 90.12.86, a combined revenue requirement and rate design case in which rates were rebalanced without any request by Qwest (f/k/a U. S. West) to involve the ILEC industry in Montana; and a 1996 case, Docket 96.12.220, in which rates, including carrier access charges, were rebalanced and again Qwest did not condition its filing to rebalance upon an industry-wide collaborative effort that it now holds is necessary.

conditions, one that Qwest has decided to ignore. Accordingly, Qwest's InterLATA entry in Montana is not in the public interest.

Consistent with our Initial Evaluation and Qwest's failure to comply with the requirements therein, we recommend the FCC deny Qwest's bid to enter the InterLATA market in Montana.

BY THE ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner, *Dissenting*
(See attached statement)

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

SEPARATE STATEMENT AND DISSENT OF COMMISSIONER ROWE
Re-filed Qwest Section 271 Application

State-specific and regional work outside the narrow confines of ensuring competitive checklist compliance is appropriate and valuable. In this docket, the states worked to craft rigorous post-entry performance plans, based on a multi-state model. States undertook a multi-state audit of Section 272 issues and imposed rigorous requirements to insure Section 272 compliance. Both state-driven efforts were critical to ensuring compliance with the Act's market-opening requirements.

The states were tough, rigorous, and effective. I was pleased with the FCC's careful attention to and apparent appreciation of both undertakings during its initial review of Qwest's applications. I look forward to a similarly thoughtful review now, especially as the FCC turns its attention more directly to the so-called "second filing" states.

I continue to disagree with the Montana Commission's well-intentioned but misguided invitation for the FCC to masticate intrastate access and other intrastate rate issues in the 271 maw. We all have more nourishing (relevant and appropriate) Section 271 issues on which to chew. My reasons for concluding this would be bad policy and a questionable reading of the law were stated at length in my partial dissent from the Montana Commission's first consultative report (August 1, 2002). It is significant that the Montana Consumer Counsel, which under the Montana Constitution represents the ratepaying public, also opposes consideration of intrastate access rates as part of this proceeding, and on that one issue opposes the Montana Commission (Reply Comments, August 26, 2002). If the Montana Commission wishes to initiate a review of Qwest's intrastate revenues, access, and retail rates, it should do so directly and under its own authority. The Montana Commission's action is an abuse of the Section 271 process and a disservice to other states.

I look forward to the FCC's review of specific, relevant issues in this proceeding.

RESPECTFULLY SUBMITTED this 15th day of October, 2002

BOB ROWE

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Rick Hays
Vice President – Montana
State Office

Exhibit A

October 1, 2002

Gary Feland, Chairman
Montana Public Service Commission
1701 Prospect Avenue
Helena, Montana 59620

Dear Gary:

In Qwest's letter to you of June 12, 2002, Qwest indicated its intention to initiate, by October 1, 2002, a proceeding in which Qwest would present options to rebalance access charge rates. Qwest is cognizant that in its 271 deliberations, the Commission expressed a desire for Qwest to initiate a broader proceeding. However, Qwest continues to believe that it would be in the public interest for the Commission to conduct an industry-wide analysis of access charges, including a review of current rates, the manner in which they are collected and their effect on competition.

There is no dispute that switched access charges have a significant industry-wide impact. Access charges are a material revenue component for all local telephone companies, incumbents and new entrants alike. In fact, new entrants often charge significantly higher rates for switched access services than are charged by Qwest and the independent telephone companies. New entrants may collect these charges for all facility-based local services, including UNE-P. Thus, major shifts in switched access charges may impact the ability of new entrants to profitably provide competitive communications services.

Similarly, switched access charges are a material expense for interexchange carriers. And, significant differences in the switched access rates charged by different local exchange carriers can create issues involving both competition and cross-subsidization. For example, today in Montana, Qwest charges approximately \$.04 per minute to originate or terminate switched access while other carriers operating in Montana charge as much as \$.23 per minute. This higher rate level could cause some carriers to elect not to offer originating long distance services to the customers served by those local carriers. And, when long distance companies terminate calls to those customers, they are, in essence, subsidizing the operations of the high priced access

provider. AT&T asserts that it is for this reason that it imposes a \$1.50 per month connection fee on its subscribers in Montana.

These issues cannot be resolved in a vacuum, and they cannot be resolved in a proceeding affecting Qwest alone. For that reason, Qwest proposes an industry-wide review. Qwest believes that the successful collaborative efforts evidenced in the Qwest 271 proceeding and the current Commission-sponsored Electric Restructure Forums create a basis for conducting a similar review of access. After completion of such a collaborative review, whether by workshops or otherwise, the Commission could then initiate a rulemaking or other proceeding of industry-wide application. In this more structured review, the Commission could receive formal comments and supporting data from interested parties and then, based on a complete record, adopt a decision on switched access charge reform.

Qwest's experience in Colorado gives it great hope that agreement can be reached, and that a balanced, pro-competitive result can be achieved on the issue of access charge reform. In Colorado, the Commission initiated a docket to consider issues concerning intercarrier compensation. In response to that Commission action, Qwest initiated discussions with industry stakeholders to fashion joint comments to the Colorado Commission on the reformation of intrastate switched access charges. The companies that filed joint comments represent a wide-ranging group of telecommunications providers that furnish telecommunications services to residential and business consumers, in both rural and urban areas. As a group, the services the companies provide to consumers include interexchange, local exchange and exchange access services. The list of companies that filed joint comments in Colorado includes: AT&T Communications of the Mountain States Inc.; WorldCom, Inc.; Sprint Communications Company, L.P.; and, the Colorado Telecommunications Association on behalf of twenty-six of its constituent members.

The good faith discussions and negotiations this diverse group conducted has resulted in a commitment by its members to file with the Colorado Commission a joint industry proposal for the revenue neutral restructuring of intrastate switched access rates.

There is every reason to believe that we can achieve a similar result in Montana. Qwest would like to participate in such a collaborative effort.

Sincerely,

CC: Commissioners